

Clerk of the Court  
United States District Court for the  
Eastern District of Pennsylvania  
Byrne Federal Courthouse  
601 Market Street  
Philadelphia, PA 19106-1797

**Re: CertainTeed Fiber Cement Siding Litigation, MDL Docket No. 2270**

27 Dec. 2013

Dear Sirs

This letter is an objection to the Settlement regarding the Class Action against CertainTeed Corporation as referenced above.

The reason I am submitting this objection is because the Remedy that I would receive from the settlement is significantly less than the actual cost to replace my siding.

Summary of the events leading up to this Objection:

I installed CertainTeed siding on my shop in 2004 and my house in 2006. I purchased this siding because it came with a 50 year warranty.

In 2007 I started noticing gaps opening up on the shop siding. By 2010 the gaps had grown and I started noticing that cracks were developing in the middle of the planks. I contacted my local supplier to see what kind of recourse was available. He gave me the contact information to file a claim with CertainTeed. I filed the claim with CertainTeed on 20 Nov. 2010.

During subsequent correspondence and two site visits, CertainTeed agreed to pay for all of the replacement siding but not for any of the cost to replace it because it was after the two year SureStart warranty period. I repeatedly requested retribution for the cost of the siding plus the cost to replace it but again was denied.

I then solicited an independent contractor to prepare an estimate for what it would take to replace all the siding. His estimate came in at \$45,284. The original material cost was \$11,309 plus CA taxes.

So the total to replace my siding in 2011 would have been approximately \$57,000.

At that time I declined the offer from CertainTeed for the replacement value of \$11,309 and elected to seek legal action. I contacted Berger & Montague, P.C. who were already investigating a class action lawsuit against CertainTeed. At that time I was informed that it was likely that the lawsuit would result in payment greater than the CertainTeed offer and potentially enough to pay for the labor to install it. During this process, representatives from Berger & Montague, P.C. visited my home and collected samples from both the shop and house for analysis.

(CertainTeed Fiber Cement Siding Litigation Page – 2)

I received the Notice of Settlement in December 2013.

There are 3 primary reasons for my objection to this Settlement that would affect the Remedy received.

1. The value used for calculating the cost of replacing siding (\$500/100 sqft) does not take into consideration difficult access, very high walls, and a porch roof that makes second floor access very difficult. I have attached photos that show the steep terrain around the house making conventional scaffolding difficult. Several of the walls will require the use of a 4 wheel drive articulating lift in order to reach over the 6:12 sloped porch roof. While the online estimator does account for the number of stories on the house and regional price differences, it does not address difficult access issues. The estimate I received is \$919/100 sqft because of these difficult conditions.
2. In order to calculate the amount of siding eligible for inclusion for this settlement, it is necessary to determine the percentage of siding that is actually damaged. However, there is no consideration given to what it takes to replace just the damaged pieces. Lap siding is installed from the bottom up so that the next piece always covers the fasteners. To replace one piece at the bottom of the wall requires that nearly the entire wall be removed. Of course with fiber cement siding, the planks cannot be reused due to the damage of removing them. So with the sample calculations provided in the Notice of Settlement, I would only get credit for the damaged planks but I would still have to replace them all.

Replacing single planks is also not feasible due to the color variations with different batches. Attached are photos showing a single piece that was removed by Berger & Montague, P.C. for analysis during the investigation. As shown in the photo, the replacement piece is clearly a different color, and would again require replacing the entire wall for color consistency. This would not be the case for painted siding but my siding is pre-stained, not painted. The photo also shows the exposed fasteners because they cannot be placed under the already secured planks above.

3. The final reason for my objection is the age reduction schedule set forth in the Notice of Settlement. Although I did not file a claim until 2010, I have been living with substandard siding since noticing the first problems in 2007. I understand I have already received some of the useful life from the siding, but it has been at a substandard level while waiting for Berger & Montague, P.C. to process my information for the Class Action. During this wait, I have experienced continued damage to the Tyvek moisture barrier and the OSB sheathing underneath, and have been subjected to dealing with the poor performance and appearance of this siding since that time. (See attached photos showing the exposed OSB sheathing).

In addition to the delay, I also take exception to the "Percent Payable" table in the Notice of Settlement as shown in the left hand columns below. The third column shows the percent life

(CertainTeed Fiber Cement Siding Litigation Page – 3)

remaining based on the proposed schedule. So for example, some of my siding was purchased in 2004, which means my remedy would be reduced to 44%, which would equate to only having 22 years of its life remaining. In reality, that siding is only 9 years old with 41 years of its life remaining based in the 50 year warranty. The prorated reduction should only be  $41/50^{\text{th}}$  or 82% rather than 44%. The remedy should be reduced by the actual time in service based on the 50 year warranty, not by this seemingly arbitrary schedule that gives CertainTeed a significant advantage.

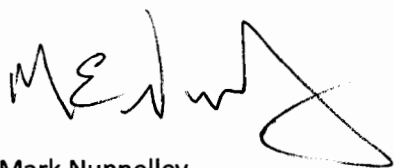
Year Purchased	Percent Payable per settlement	Life remaining per this schedule		Years Old	Life remaining (based on 50 Yr warranty)	% life remaining (based on 50 Yr warranty)	Corrected Prorated reduction (based of 50 Yr warranty)
2013	80%	40		0	50	100%	100%
2012	76%	38		1	49	98%	98%
2011	72%	36		2	48	96%	96%
2010	68%	34		3	47	94%	94%
2009	64%	32		4	46	92%	92%
2008	60%	30		5	45	90%	90%
2007	56%	28		6	44	88%	88%
2006	52%	26		7	43	86%	86%
2005	48%	24		8	42	84%	84%
2004	<b>44%</b>	<b>22</b>		9	<b>41</b>	82%	<b>82%</b>
2003	30%	15		10	40	80%	80%
2002	36%	18		11	39	78%	78%
2001	32%	16		12	38	76%	76%
2000	28%	14		13	37	74%	74%
1999	24%	12		14	36	72%	72%

(CertainTeed Fiber Cement Siding Litigation Page – 4)

I am respectfully requesting that this settlement be reconsidered so that I can recover the full cost of the siding and the cost to remove the old siding, repair the damaged moisture barrier and reinstall new siding, to bring it back to the condition it would be in when I filled the claim, if I had used a competitor's product.

It is not feasible for me to travel to Pennsylvania for the hearing or to secure my own counsel. Therefore, it is not my intention at this time to secure a lawyer or appear at the hearing myself.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mark Nunnelley', with a large, sweeping flourish at the end.

Mark Nunnelley  
PO Box 1336  
5262 Fullen Road,  
Murphys, CA 95247

#### Attachments

1. Photos showing damage and difficult access for replacing siding (6 pages)
2. Original claim against CertainTeed Corporation dated 20, Nov. 2010. (3pages)
3. Proof of purchase (Senders Market receipts 6/18/04 and 12/18/06) (2 pages)
4. CertainTeed letter 12/7/10 acknowledging receipt of claim. (1 page)
5. CertainTeed letter 01/10/11 authorizing replacement of all the siding on both structures but nothing for the cost of replacing the siding. (2 pages)
6. My letter 1/19/11 with detailed count of defects and damage and another request to collect the cost of replacement. (3 pages)
7. CertainTeed letter 01/24/11 denying responsibility for repair costs and offer to settle claim by either replacing siding or cash settlement of \$11,309. (4 pages)
8. Signed Retainer Agreement with Berger & Montague, P.C. (3 pages)

**CertainTeed Fiber Cement Siding Litigation, MDL Docket No. 2270**

Contact information for Mark Nunnelley

Mailing address:

Mark Nunnelley  
PO Box 1336  
Murphys CA, 95247

Physical address for property in question:

5262 Fullen Road  
Murphys, CA, 95247

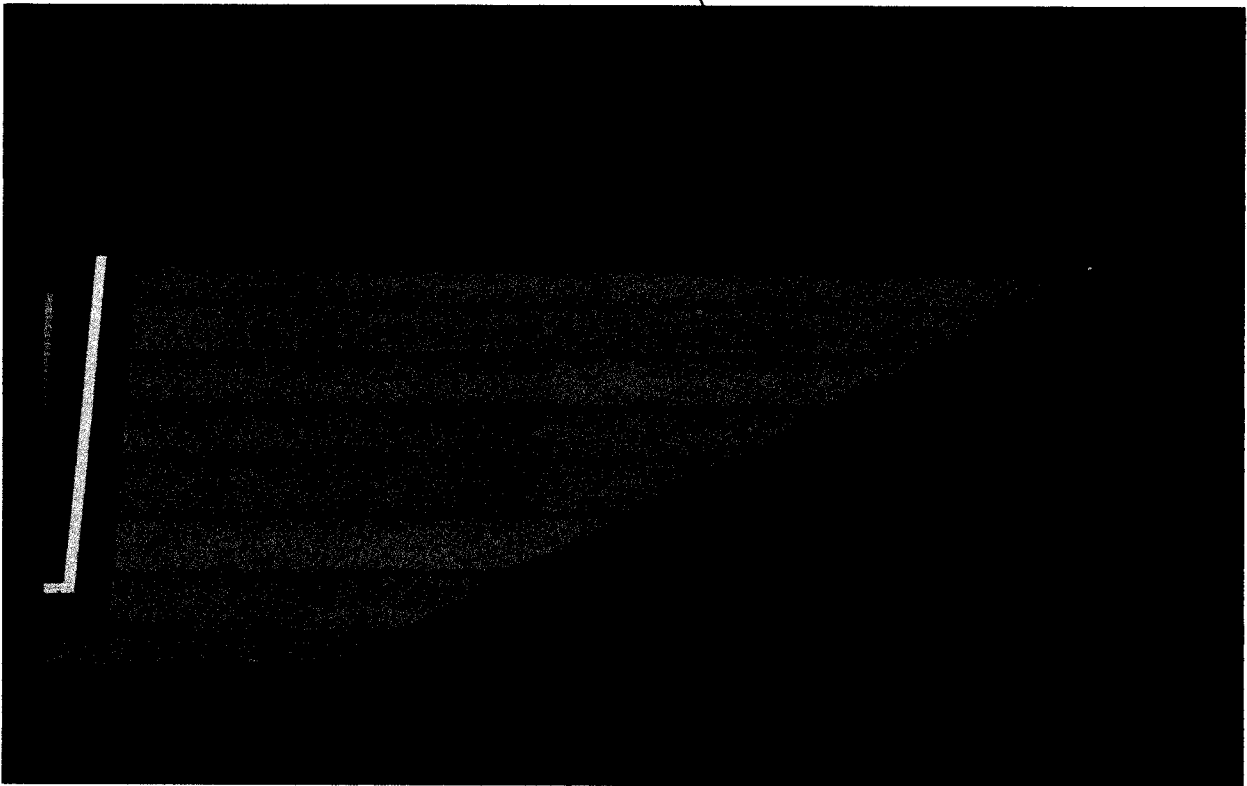
Home Phone: (209) 728-8815  
Work Phone: (209) 736-6672  
Cell Phone: (209) 768-6940

Email address:

MKNSolar@yahoo.com



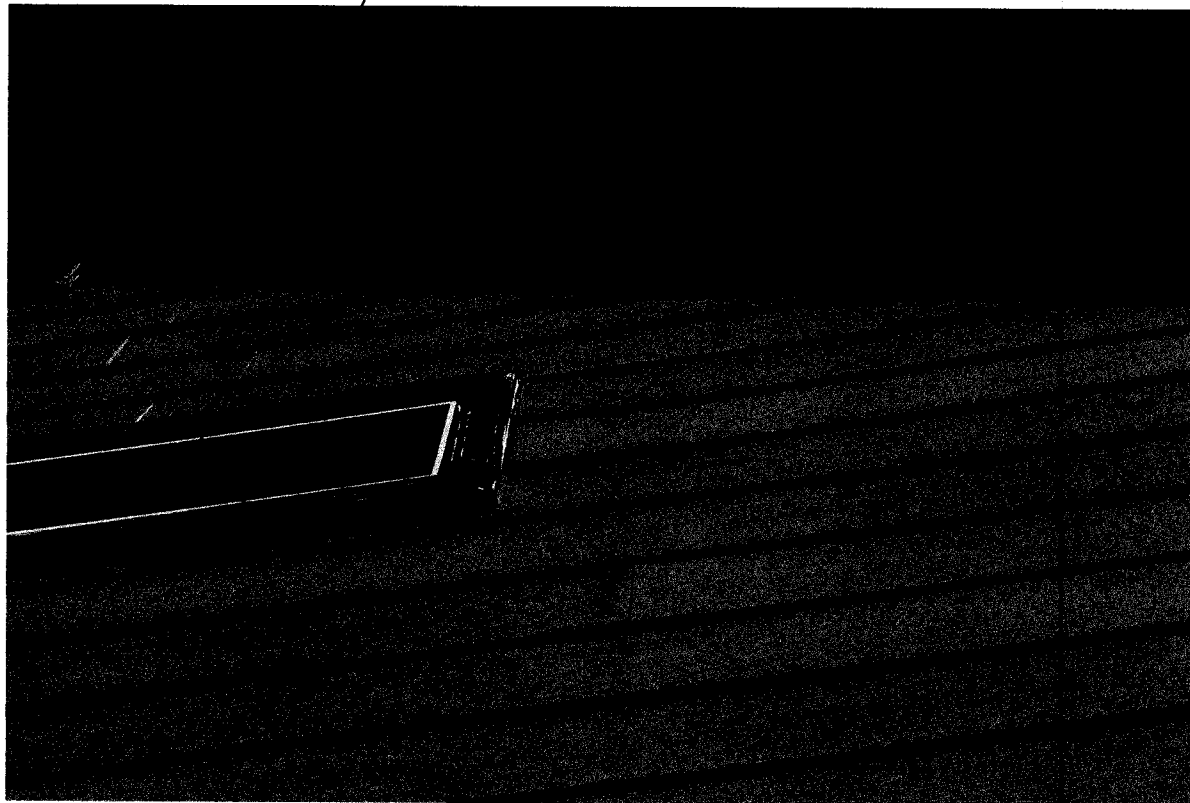
House – North side – difficult to access second floor on 6/12 pitch roof



House – second floor cracks

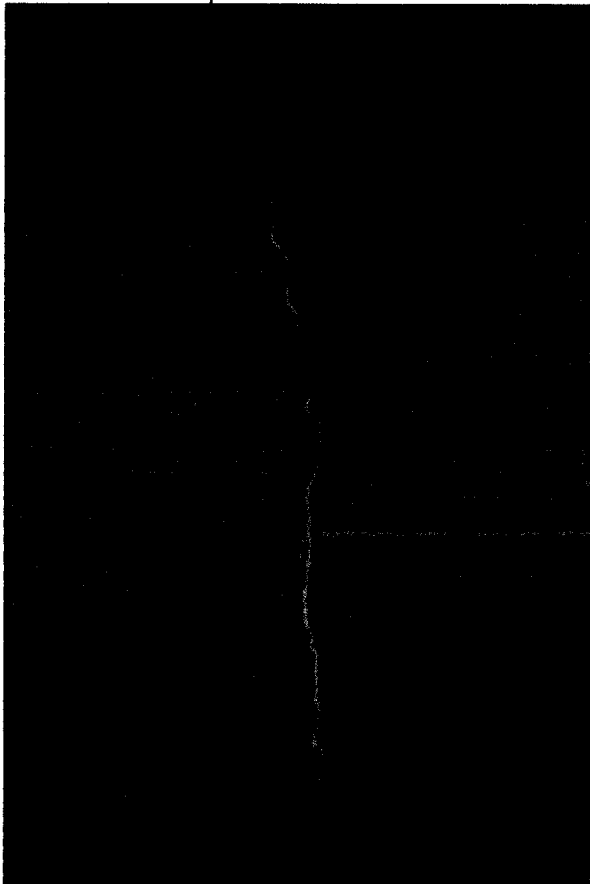


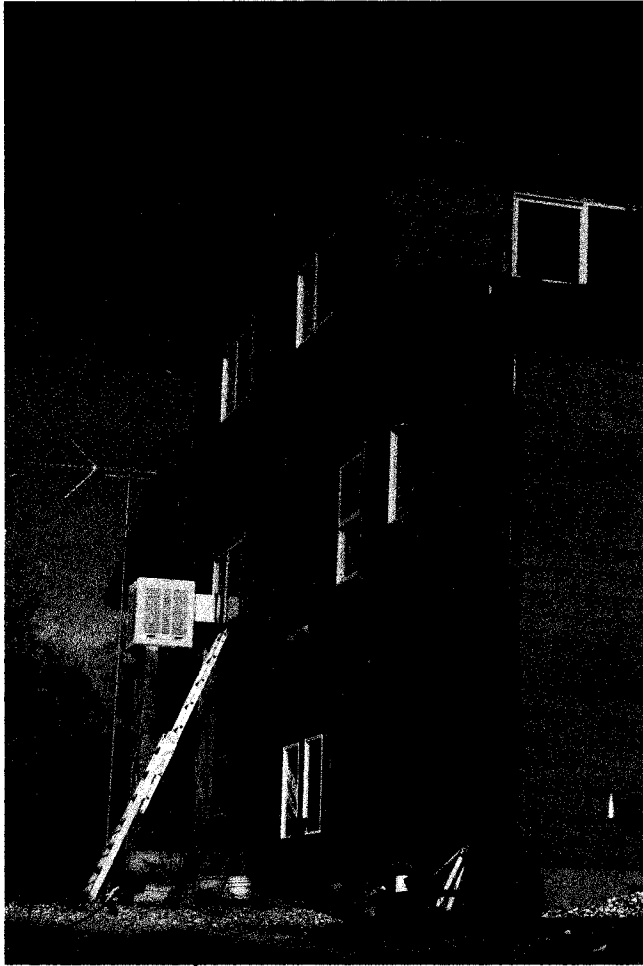
House – West side showing difficult access and high wall (approx. 33 ft)





House – South side showing difficult access to second floor

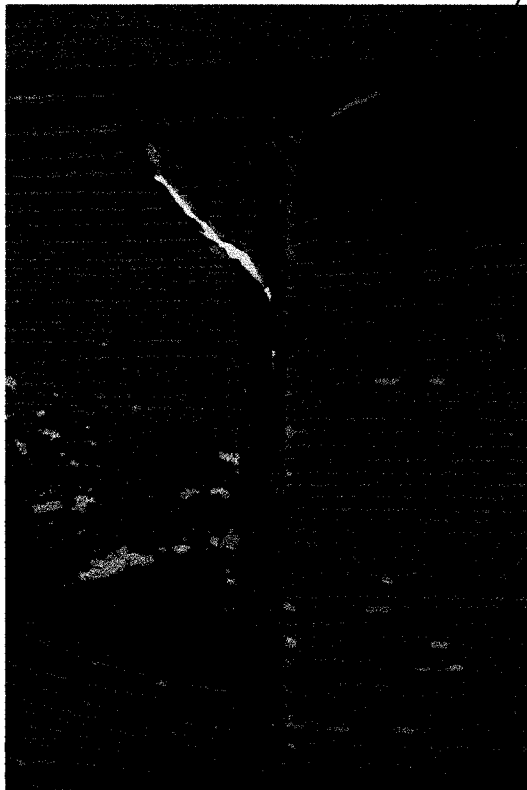




Shop West wall – 30 ft tall

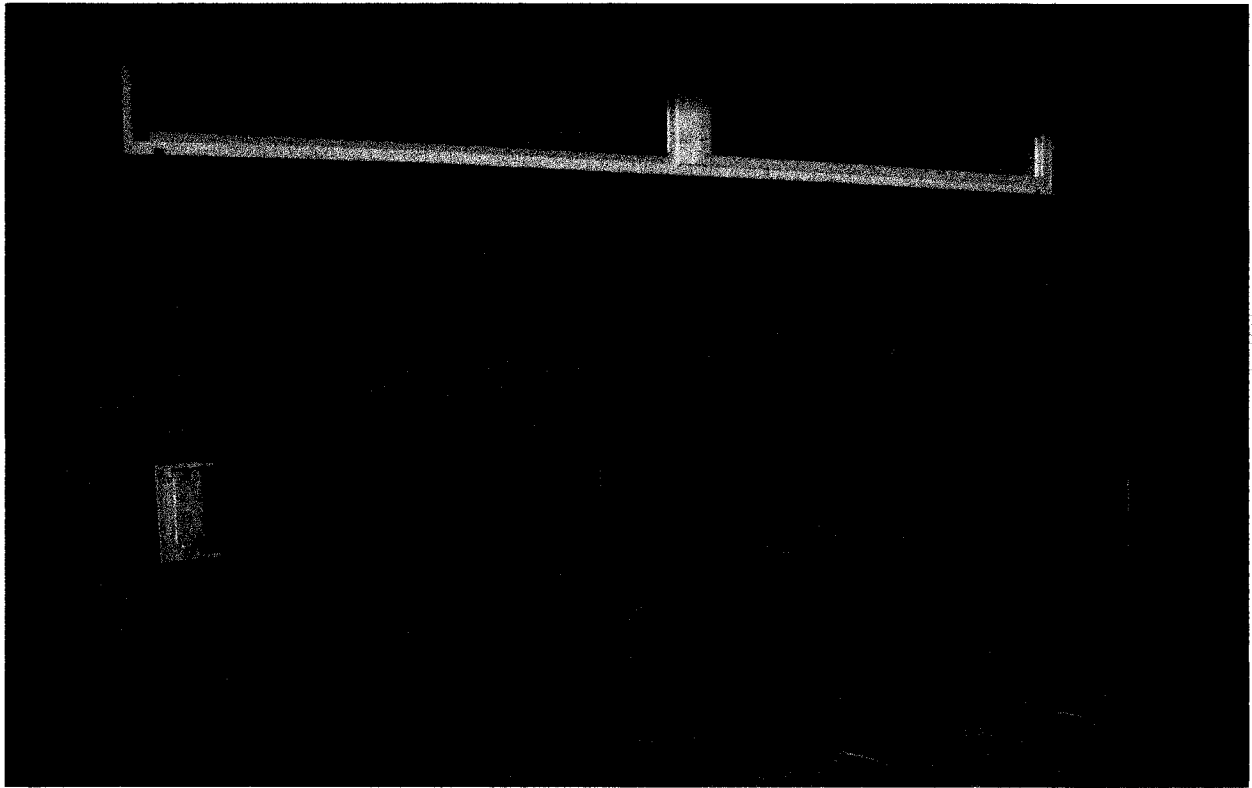


Shop – West Wall showing joints



OSB under sheathing

Shop – South wall – note damage to Tyvek and exposed



Single plank removed from house for sampling by Berger & Montague, P.C.

Replaced with spare from shop but the same stain. Note different color and exposed fasteners.


Consumer Services  
CertainTeed Corporation  
803 Belden Road  
Jackson, MI 49203

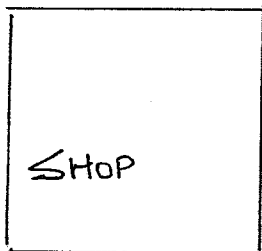
20 Nov, 2010

Dear Sirs,

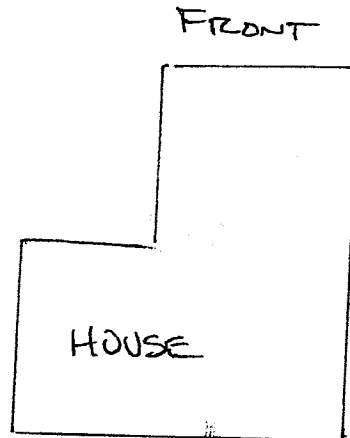
Please find attached my FIC claim application, proof of purchase and associated photos. There are two structures involved, my shop and my house. I bought identical siding at two different times but both are showing the same problems. The sketch below shows the arrangements of the building.

Thank You for your assistance.

  
Mark Nunnelley  
POBox 1336  
Murphys, CA 95247



FRONT



**Consumer Services****CertainTeed Corporation**

803 Belden Road

Jackson, MI 49203

Toll Free #: 800.999.3654

Fax #: 517.787.0023

Email: [jtc.conservfc@saint-gobain.com](mailto:jtc.conservfc@saint-gobain.com)**CertainTeed**  
SAINT-GOBAIN

Incident # NEW CLAIM

**FIC COMPLAINT QUESTIONNAIRE: GENERAL INFORMATION**

FAILURE TO COMPLETE THIS FORM MAY REQUIRE US TO RETURN IT TO YOU, DELAYING OUR RESPONSE.

1. Name Mark Nunnelley Name Katherine Nunnelley  
(home/property owner – first and last name) (spouse or secondary owner, if any – first and last name)
- Complaint Address** 5262 Fullen Road City Murphys State CA Zip 95247
- Mailing Address\*** P.O. Box 1336 City Murphys State CA Zip 95247  
\* If different than complaint address.
- Phone #: Home (209) 728-8815 Work (209) 736-6672 Fax (209) 728-8742
- Email Address: MKNSolar@yahoo.com Is the **Complaint Address** a rental property? ☐ Yes ☒ No
- Work Phone # is for (enter name): Mark
2. Company who **applied** material: Name applied by owner Address Same as above  
City  State  Zip  Phone #
- Company who **sold** material: Name Senders Market Address POBox 197 8111 Garabaldi St.  
City Mountain Ranch State CA Zip 95246 Phone # 209-754-1074
4. Product Involved: Name: 1x8x12 certainteed pre stained fiber cement siding Color: Cedar
- Profile: ☒ Lap Siding ☐ Shapes Siding ☐ Specialty Lap ☐ Vertical Siding ☐ Soffit ☐ Other
- Texture: ☐ Smooth ☒ Cedar Grain ☐ Stucco ☐ Other
- Panel Size: ☐ 5 1/4" ☐ 6 1/4" ☐ 7 1/4" ☒ 8 1/4" ☐ 9 1/4" ☐ 12" ☐ 16" ☐ 24" ☐ Other
- Sheet Size: ☐ 4'x 8' ☐ 4'x 9' ☐ 4'x 10' ☐ Other
5. # of Squares on Building (1 Square = 100 sq/ft of wall area): A=28.8 B= 33.2 # of Squares Affected: Approx 15
6. Wall(s) Affected (check only those affected – identify the left & right walls as if viewing from the front of the property):  
☐ Front ☒ Back ☒ Left ☒ Right ☐ Other(s)
7. Wall Sizes (length x height in feet): Front  Various  Back  x  Left  x  Right  x   
Gables: 1)  x  2)  x  Please note location of gables (which wall): 1)  2)
8. Which wall faces **North**? ☒ Front ☐ Back ☐ Left ☒ Right
9. Dates of: A. Installation: Month July Day  Year 2004 Purchase: Month June Day 18 Year 2004  
B. Installation: Month Jan Day  Year 2006 Purchase: Month Dec Day 18 Year 2006
10. Proof-of-Purchase is **REQUIRED**. Please note which item is attached (check one):  
☐ Copy of Applicable Warranty ☐ Sample ☐ Other   
☒ Paid receipt specifically identifying our company as the manufacturer of the product stated above
11. Photos of **all walls** are **REQUIRED**. Please include at minimum fourteen (14) photos (see Cover Letter for examples).

Note: We recommend submitting as many photos as necessary to clearly show the concern and the complete layout of the complaint property.

**Consumer Services  
CertainTeed Corporation**803 Belden Road  
Jackson, MI 49203

Toll Free #: 800.999.3654

Fax #: 517.787.0023

Email: [jtc.conservfc@saint-gobain.com](mailto:jtc.conservfc@saint-gobain.com)**CertainTeed**  
SAINT-GOBAIN12. If the concern is for cracked boards, *approximately* how many boards are cracked? 15-20

Incident # NEW CLAIM (Continued)

13. Average Width of Gaps @ Joints: ☐ Butted (no gap) ☐ 1/16" ☐ 1/8" ☐ 3/16" ☒ 1/4" ☒ More Than 1/4"14. Did you own the property when the product was installed\* ☒ Yes ☐ No If No, date purchased: \_\_\_\_\_  
\*Answer YES, if you purchased or built a new construction property. In other words, were you the first person to live/reside within the property?15. If necessary, do we have permission to physically inspect the property? ☒ Yes ☐ No16. Nature of problem (*be specific – use reverse side if necessary*): Joints opening excessively, Boards bending up at ends (curling), Corners breaking, Boards cracking at cuts and in mid span. \_\_\_\_\_**FIC COMPLAINT QUESTIONNAIRE: COATING INFORMATION**1. Coating Application: ☒ Prefinished ☐ Field Applied ☐ None (Primed Board) ☐ Other \_\_\_\_\_*Note: If you selected None (Primed Board) the remaining questions below do not apply to your property.*2. Company who prefinished material (*if applicable*): Name CertainTeed Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Phone # \_\_\_\_\_

*Note: If unsure, refer to the General Information section and contact either the Company who applied or sold the material for confirmation.*3. Company who field applied paint/stain (*if applicable*): Name \_\_\_\_\_ Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Phone # \_\_\_\_\_

4. Company who manufactured paint/stain: Name \_\_\_\_\_ Product \_\_\_\_\_

## 5. Type of Coating (Paint/Stain):

Choose one: ☐ Paint ☒ Stain ☐ Other \_\_\_\_\_Choose one: ☐ Exterior ☐ Interior ☐ Other \_\_\_\_\_Choose one (if Paint): ☐ Acrylic Latex ☐ Water-Based Latex ☐ Oil-Based ☐ Other \_\_\_\_\_Choose one (if Stain): ☐ Solid Color/Opaque ☐ Transparent ☐ Semi-Transparent ☐ Other \_\_\_\_\_

6. Color of Coating: \_\_\_\_\_

7. # of Coats of Coating: ☐ 1 ☐ 2 ☐ Other \_\_\_\_\_8. Quantity of Coating (*in gallons*) \_\_\_\_\_9. How long after product installed was the Coating applied?: ☒ Prefinished ☐ Other (*List # of Days*) \_\_\_\_\_10. Are the backsides of the boards primed or coated?: ☐ Yes ☒ No ☐ Other \_\_\_\_\_11. If field applied, how was coating applied?: ☐ Sprayer ☐ By Hand ☐ Other \_\_\_\_\_

Signature(s): \_\_\_\_\_ Date: \_\_\_\_\_



## Mountain Ranch, CA.

P.O. BOX 197 • 8111 GARABALDI ST., MOUNTAIN RANCH, CA 95246  
 PHONE (209) 754-1074 • FAX (209) 754-4215  
 HARDWARE • LUMBER • GROCERY • FEED

Customer No.	Job No.	Purchase Order No.	Reference	Terms	Clerk	Date	Time
2860			SPECIAL ORDER #247591	NET 10	236	12/18/06	8:24

## Sold To

MARK NUNNELLEY  
 P.O. BOX 1336

MURPHYS CA 95247

## Ship To

DUE DATE: 1/10/07

TERM#559

DOC# 86165

\*\*\*\*\*

\* INVOICE \*

\*\*\*\*\*

TAX : 001 CALIF STATE TAX

ORDR 247591

SHIPPED	ORDERED	UM	SKU	DESCRIPTION	SUGG	UNITS	PRICE/PER	EXTENSION
415		EA	SL	1X8X12 CERTANTEED PRESTAINED		415	16.85 /EA	6,992.75
9		EA	982816	2X8X16 PT W/HF 2B S4S	20.16	9	18.143/EA	163.30 Q
				DISCOUNT 10.00%				
				RECOMMENDED: 2 MAX JOIST				
				HANGERS/HD GALV NAILS (EXTREME				
				CORROSION PROBLEM WITH NEW PT				
				CA-B)				
25		EA	972420AP	2X4X20' ADVANTAGE PRIMED	34.468	25	31.021/EA	775.53 Q
				DISCOUNT 10.00%				
4		EA	942416	2X4X16 RWD B GRADE DRY	27.115	4	24.403/EA	97.61 C
24		EA	19700	CAULK BIGSTRCHCLR10.5OZ	4.99	24	4.491/EA	107.78 C
14		EA	150ZBAR	1 1/4" X 1 1/2" X 1 1/4" Z METAL	5.28	14	4.752/EA	66.53 C
20		EA	FT138	1-3/8" FAST TAPS LB	7.59	20	6.49 /EA	129.80 *
1		EA	FORK	FORK LIFT DELIVERY		1	40.00 /EA	40.00

\*\* AMOUNT CHARGED TO STORE ACCOUNT \*\*

8,980.37

TAXABLE

8373.30

NON-TAXABLE

0.00

SUBTOTAL

8373.30

TAX AMOUNT

607.07

TOTAL AMOUNT

8980.37

X

Received By

Sender's



Market, Inc.

"Ace Is The Place"

HARDWARE • LUMBER • GROCERY • FEED

P.O. BOX 197 • 8111 GARABALDI ST. • MOUNTAIN RANCH, CA 95246 • (209) 754-1074 OR 1855 • FAX (209) 754-4215

TYPE OF TRANSACTION	DOCUMENT NUMBER	TRANSACTION DATE	ACCT NUMBER	PAGE
HOUSE	01062396	08 06/18/04 10:49:21	2860	1

BILL TO:  
MARK NUNNELLEY  
P.O. BOX 1336

SHIP TO:  
MARK NUNNELLEY  
P.O. BOX 1336

MURPHYS

CA 95247

MURPHYS

CA 95247

PURCHASER: MARK NUNNELLEY CASHIER: ALLEN SENDER PO #: TERMS: SALESMAN:

QUANTITY	ITEM NUMBER	DESCRIPTION	PRICE/UNIT	AMOUNT
360	*SL	Section Header		
50	972420HF	1X8X12 CEDAR PRESTAIN	11.990N	4316.40
11	ASC035	2X4X20 HF S152E PRIMED	14.805N	740.25
60	C050	10'6" FOREST GRN FLASHING	3.790	41.69
20	C075	1/2" TYPE M COPPER PIPE	.585	35.10
1		3/4" TYPE M COPPER PIPE	.855	17.10
		FORK FORK LIFT DELIVERY	40.000	40.00

ALL DUE AND PAYABLE ON THE 10TH OF  
MONTH FOLLOWING STATEMENT DATE.  
LATE CHARGE OF 1.50% WILL BE IMPOSED  
ON OVERDUE AMOUNTS. LEGAL ACTION MAY  
BE INSTITUTED FOR COLLECTION. IN THE  
EVENT LEGAL ACTION IS REQUIRED  
TO COLLECT UNPAID BALANCE, SENDERS  
MARKET, INC. IS ENTITLED TO COSTS AND  
RESTITUTION OF LEGAL FEES.

HOUSE 5566.85

TAXABLE 5190.54

TAX 376.31

NON-TAXABLE .00

SUB-TOTAL 5566.85

TOTAL 5566.85

RECEIVED THE ABOVE IN GOOD CONDITION

RETURNS MUST BE ACCOMPANIED BY ORIGINAL INVOICE OR RECEIPT AND MUST BE IN ORIGINAL PACKAGING.

STD#00016216

12/07/2010

**Consumer Services**

**CertainTeed Corporation**

803 Belden Road

Jackson, MI 49203

Toll Free #: 800.999.3654

Fax #: 517.787.0023

Email: [jtc.conservfc@saint-gobain.com](mailto:jtc.conservfc@saint-gobain.com)

**CertainTeed**  
SAINT-GOBAIN

Mark & Katherine Nunnelley

PO Box 1336

Murphys, CA 95247

RE: Incident # 00170398 – Complaint Address @ 5262 Fullen Rd in Murphys, CA

Dear Mr. & Mrs. Nunnelley:

We have reviewed the information submitted for the above referenced property. The claim was initiated over the following concern: **excessive gaps and cracking**. In response to this review, a field inspection of the property will be performed.

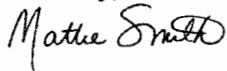
At this time, a Consumer Services Field Representative will be contacting you in the next few weeks to arrange an inspection date consistent with the demands of their regional responsibilities. After the inspection date has been scheduled, if you wish to have your siding contractor present during the inspection, please inform your contractor of the date and time to allow them the opportunity to attend.

*One final note: We review each wall of a building on an individual basis. Therefore, the resolution of this claim will be based on the merits of the field inspection observations of each wall. In accordance, the authorization of some material on one or more walls does not necessitate nor warrant the authorization of some material on other walls.*

**Warranty Information:** The fibercement siding is covered by our material warranty which includes SureStart Protection for a period of 2-years from the date of the original installation. Upon expiration of the SureStart Protection, the warranty covers material costs only on a prorated basis. In this instance, the claim was initiated with our company on November of 2010 and the original installation date was on or about July of 2004. Therefore, the SureStart Protection has expired. In response, if a legitimate warranty concern is verified our responsibility is limited to the cost of replacement material only.

Thank you for your cooperation in this matter.

Sincerely,



Mattie Smith

Consumer Services Representative

**Consumer Services**

**CertainTeed Corporation**

803 Belden Road

Jackson, MI 49203

Toll Free #: 800.999.3654

Fax #: 517.787.0023

Email: [jtc.conservfc@saint-gobain.com](mailto:jtc.conservfc@saint-gobain.com)

**CertainTeed**  
SAINT-GOBAIN

Mark & Katherine Nunnelley  
PO Box 1336  
Murphy, CA 95247

01/10/11

RE: Incident # 00170398

Dear Mr. & Mrs. Nunnelley:

We have reviewed the information submitted for the above referenced property for the following concern: **Gapping and cracks.** In response to the information received, I performed a field inspection of the property on 1/3/11 along with you.

In regards to the joint/seam gaps concern, understand that fibercement siding is an exterior cladding that is subjected to the elements. The affect of nature upon the siding may cause the siding to expand and contract with changes in temperature, moisture and structural movement. This can result in spacing (gaps) that may appear larger or smaller in different areas, which is normal and expected. At the inspection, the spacing was reviewed to determine if they are excessive.

Upon review of the gap spacing, the amount of spacing at some of the joint seams is larger than the acceptable expectations.

With regard to the cracks concern, understand that CertainTeed fibercement siding is a durable product but is far from indestructible. If the material is subjected to a sufficient amount of impact, damage or stress, the boards can crack. The reality of fibercement siding and other cement products is that they can be broken. At the inspection, the cause of the cracks was reviewed to determine if they were material, substrate or installation related.

As required in all concerns where the application could affect the performance of the material, the installation of the fibercement was reviewed. In this instance, the following installation issues were found to have directly resulted in cracking/breakage of the product:

**Cracking at window and/or door frames.** As with all construction, there may be some degree of structural movement of the substrate. If there is structural movement, it may result in internal stress on the panels which could cause cracks or breakage in the boards, especially around window and door frames. In this instance, there were several instances where cracks/breakage occurred at the window and/or door frames, mostly at the corners. This is consistent with a structural movement concern, which is not a board issue. This condition was evident on the following walls: front, left, right and back.

Understand that the above noted installation issues can cause cracking/breakage of the siding. However, there were some areas where the cracks/breakage did not appear to be the result of a known installation or substrate issue.

**Consumer Services**

**CertainTeed Corporation**

803 Belden Road

Jackson, MI 49203

Toll Free #: 800.999.3654

Fax #: 517.787.0023

Email: [jtc.conservfc@saint-gobain.com](mailto:jtc.conservfc@saint-gobain.com)

**CertainTeed**  
SAINT-GOBAIN

Based on the inspection observations, we will authorize a material replacement on all walls of shop and all walls of house. The following siding supplier will handle your claim:

Sender's Market  
Contact: Allen Sender  
8111 Garabaldi Street  
Mountain Ranch, CA 95246  
Phone # 209-754-1074

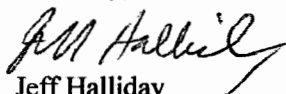
Please use this letter to contact the supplier listed above and make arrangements to acquire the approved replacement material. **At no cost**, we have **authorized** the release of the following to you or your contractor:

775 pieces of WeatherBoard Fibercement 8 1/4 Pre finished stained (Product code 15017/615)

**Warranty Information:** The fibercement siding is covered by our material warranty which includes SureStart Protection for a period of 2-years from the date of the original installation. Upon expiration of the SureStart Protection, the warranty covers material costs only on a prorated basis. In this instance, the claim was initiated with our company on 11/30/10 and the original installation date was on or about 01/06. Although the SureStart Protection period has expired, which means we are only liable for a prorated portion of the material replacement, as a *gesture of goodwill*, the above authorization should cover 100% of the siding necessary to make the replacement on the affected walls.

Thank you for your cooperation in this matter.

Sincerely,



Jeff Halliday

Consumer Services Field Representative

**Note to the supplier:** Please release the items listed above. Upon receipt of the final material count to our office, the appropriate credit will be issued to the distributor's account. This information can be faxed to us at 517.787.0023.

cc: Michael Houk  
Distributor: Sender's Market (Contact: Allen Sender Phone # 209-754-1074)

January 19, 2011

Attn: Jeff Halliday  
Consumer Services  
CertainTeed Corporation  
803 Belden Road  
Jackson, MI 49203

**Re: Incident# 00170398**

Dear Mr. Halliday:

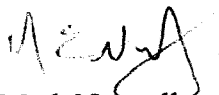
I am writing in response to your letter dated January 10, 2011. In our view, you have considerably downplayed the magnitude of the gapping and cracks in our fibercement siding. In light of this, I decided to perform a detailed count of the problems we discussed. Conservatively, I counted 155 joint gaps that exceeded 3/16", 54 corners that were broken, 13 planks that were broken in the middle of the field, 77 planks that were warping at the joint, and 36 planks that are experiencing problems with the stain finish, but only 8 cracks that could possibly be attributed to not enough gap between the trim and the plank. By your own admission, not leaving enough gap was the only possible installation issue you identified.

I have also contacted a reputable contractor and obtained an estimate for what it would take to completely remove, dispose of, prep the wall, and install the new siding. His estimate is \$45,284. I have also received an informal opinion that indicated this estimate is probably low in light of the difficult access, walls in excess of 25' tall, and intermediate roof construction. In either case, this is far more than I can afford to replace siding that I was told would last 50 years.

I am truly disappointed that you feel your offer is a "gesture of goodwill" when I will be the one forced to pay out over \$45,000 to replace the siding. That doesn't even address the additional risk that I will face due to the reconstruction such as damage to internal sheet rock or damage to the roof, windows, or trim, or the inconvenience of a construction crew on site for two months.

Based on this information, I cannot accept your offer to supply new material only and I am again requesting that CertainTeed pay the cash value of the Siding **plus** the estimated value for labor, defined above in the amount of \$45,284, for the complete replacement of the siding material.

Thank you for your consideration, .

A handwritten signature in black ink, appearing to read 'Mark Nunnelley', with a stylized flourish at the end.

Mark Nunnelley  
P.O. Box 1336  
Murphys, CA 95247

CertainTeed Fibercement Siding defect analysis  
 5262 Fullen Road, Murphys Ca  
 Claim # 170398

Jan 17 2011

Wall	Total Joint	Gaps>3/16"	Broken Corner	Broken in Field	Broken at notch w/ 1/8" gap	Broken at notch w/o 1/8" gap	Stain peeling/damaged	Boards warping at Joint
Shop South	50	42	20	1	0	3	7	31
Shop West	95	59	14	0	0	0	2	24
Shop North	48	22	3	0	0	1	0	2
Shop East	29	18	14	1	0	0	2	4
House South	10	4	1	1	0	1	3	0
House West	58	8	0	7	1	3	18	14
House North	20	0	0	0	0	0	4	0
House East	65	2	2	3	0	0	0	2
Totals	375	155 41%	54	13	1	8	36	77 21%

01/24/2011

**Consumer Services****CertainTeed Corporation**

803 Belden Road

Jackson, MI 49203

Toll Free #: 800.999.3654

Fax #: 517.787.0023

Email: [jtc.conserv@saint-gobain.com](mailto:jtc.conserv@saint-gobain.com)**CertainTeed**  
SAINT-GOBAIN

Mark &amp; Katherine Nunnelley

5262 Fullen Rd

PO Box 1336

Murphys, CA 95247

RE: Incident # 00170398

Dear Mr. &amp; Mrs. Nunnelley:

We have received information about a continued concern about the resolution of the above referenced claim. Based on the information, it is apparent that you feel the labor portion of the claim is not resolved. In response, the facts of this complaint along with all corresponding claim data were re-reviewed.

Your concern was also taken to Management to verify that the decision was properly applied based on the terms and conditions of the warranty. Management concluded that the Consumer Services department has followed the proper claims processing procedures and guidelines as set forth in the applicable warranty.

The applicable warranty states that under no circumstances and in no event will CertainTeed be liable for any labor charges or other expenses whatsoever in connection with the removal, repair or installation of either the original or replacement fibercement, except as provided by the SureStart™ Protection described in the warranty.

In this instance, the CertainTeed fibercement siding products are covered by the SureStart™ Protection for a period of two (2) years following the date of the completion of the initial installation. Under this warranty feature, CertainTeed will pay to repair or replace, at its option, any fibercement siding proven to be defective, unless CertainTeed elects to pursue the refund option as described in the warranty.

The complaint information we received notes that the date of the original installation was July of 2004 for the shop and January of 2006 for the house. Per our records, the Consumer Services Department was first notified of the complaint on November of 2010. Therefore, the SureStart™ Protection Warranty Period expired July of 2006 for the shop and January of 2008 for the house.

Due to the expiration of the SureStart™ Protection, any current and future warranty coverage is for replacement materials only.

At this time the stained product currently installed on the property is unavailable. Due to this situation, we will offer the following options for you to consider for the resolution of this claim:

**Option #1:** A replacement with prefinished material in a solid paint color for all walls of the property. The replacement would be for 775 pieces of 8.25" Cedar Lap in any of the available solid paint colors.

**Option #2:** A replacement with prefinished material in the original stain color for the affected walls, as listed above. The replacement would be for 775 pieces of 8.25" Cedar Lap in the original stain color (Cedar). In this instance, you would have to wait for the availability of stained product, which is currently unknown.

Consumer Services

01/24/2011

**CertainTeed Corporation**

803 Belden Road

Jackson, MI 49203

Toll Free #: 800.999.3654

Fax #: 517.787.0023

Email: [jtc.conserv@saint-gobain.com](mailto:jtc.conserv@saint-gobain.com)**CertainTeed**  
SAINT-GOBAIN

Incident #00170398

**Option #3: A cash settlement.** In this instance, the cash settlement will be in the amount of \$11,309.15. The cash settlement figure is equal to the original cost of the material per your original invoices.

Please take a moment to review the above offers. If you choose **Option 1**, please indicate what solid paint color you would like for the replacement (*see enclosed color sheet*). If you choose **Option 2**, we will pursue the replacement once the stained product is available. If you choose **Option 3**, we request that you sign, and have witnessed, the attached release absolving our company of any further responsibility for the siding and/or accessories on the entire property. Once we receive an "*original*" copy of the completed release, we will then continue the process necessary for final settlement of this claim. *Note: After we receive the completed release in our office, please allow us 3-5 weeks to process the paperwork to have your check issued.*

Sincerely,



Pam Brenner

Consumer Services Representative

Enclosure

Option Chosen (please check one):

☐ 1☐ 2☐ 3

01/24/2011

Consumer Services

**CertainTeed Corporation****803 Belden Road****Jackson, MI 49203****Toll Free #: 800.999.3654****CertainTeed**  
SAINT-GOBAIN**RELEASE OF DISPUTED CLAIM**

Incident #: 00170398

Background

This Release of a disputed claim is entered into by Mark Nunnelley and Katherine Nunnelley ("Claimant(s)") in favor of CertainTeed Corporation, Saint-Gobain Corporation, and any and all affiliates, (collectively "Company").

On or about July 2004 and January 2006, Claimant(s) purchased, applied or installed CertainTeed 8.25" Cedar Lap siding and/or accessories on the building/home/property located at 5262 Fullen Rd in Murphys, CA 95247.

Claimant(s) own(s) the building/home/property referenced above.

Claimant(s) allege(s) that the siding and/or accessories is/are defective.

The parties desire to resolve and settle this disputed claim.

Release

1. Claimant acknowledges the receipt and acceptance of Eleven Thousand Three Hundred Nine Dollars and 15/100 Cents (\$11,309.15) (the "Settlement Funds") as settlement of this claim.

2. In exchange for Company's payment of the Settlement Funds, Claimant(s) hereby remise(s), release(s), and forever discharge(s) Company, its officers, agents, employees, predecessors, successors, parent companies, and assigns, from any and all manner of actions, causes of action, warranty claims, contract actions, suits, debts, attorneys' fee or consultant fee claims, accounts, damages, including property damage and personal injuries, judgments, claims and demands of every nature whatsoever against Company which Claimant(s) now have/has or ever had or which may hereafter arise, or which the predecessors, successors, heirs, executors, administrators or assigns of Claimant(s) ever have or had or may in the future have arising out of or in any way related to Claimant(s) purchase, application or use of the siding and/or accessories on the above-referenced building/home/property.

3. The sum cited herein is the sole and only consideration for this Release.

4. Claimant(s) agree(s) that the terms of this Release are not an admission of liability by Company, and acknowledge(s) that Company has expressly denied all liability to Claimant(s) but has agreed to provide the aforementioned consideration to resolve the Disputed Claim.

5. Claimant(s) agree(s) that to the extent Company receives a demand for money via subrogation arising out of this Disputed Claim from one or more of Claimant's(s') insurance carriers, Claimant(s) agree(s) to use the money provided by Company to pay and/or reimburse the insurance carrier(s) to offset any such demand for subrogation.

6. Claimant(s) agree(s) to indemnify and hold harmless Company, and provide a defense to Company with counsel chosen by Company, from and against any claims, demands, suits, or other causes of action, including claims alleging that Company was negligent, which in any way arise out of or are related to the Disputed Claim.

7. Claimant(s) agree(s) to keep all terms of this Release confidential. Claimant(s) shall not disclose any terms of this Release to anyone, except pursuant to a Court order or written consent by an authorized representative of Company. Claimant(s) acknowledge(s) that Company has reserved the right to seek damages from Claimant(s) for breach of this provision.

8. This Release between Company and Claimant(s) is the entire agreement. Any amendment to this Release must be in writing, must specifically refer to this Release, and must be signed by a duly authorized representative of each of the parties.

9. Signatory(ies) certify(ies) s/he/they (i) has/have read this Release, (ii) are fully authorized to enter into this Release, (iii) are the lawful owners of the building/home/property referenced above, and (iv) fully understand(s) all of the terms and conditions of this RELEASE OF DISPUTED CLAIM.

**CertainTeed Corporation**  
803 Belden Road  
Jackson, MI 49203  
Toll Free #: 800.999.3654

**CertainTeed**  
SAINT-GOBAIN

## RELEASE OF DISPUTED CLAIM

Incident #: 00170398

Page 2

[Claimant(s)] expressly agrees that this Release constitutes a full and final release covering all claims, demands, actions, suits, liens, debts, damages and liabilities arising up to and including the date of this Release, including, but not limited to, matters arising from or relating to the disputed claim, including those which are unknown and unanticipated, as well as those which are known and disclosed. In that respect, Rain for Rent waives all rights under Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

[Claimant(s)] waives and relinquishes any rights and benefits [he/she/they/it] may have under section 1542. [Claimant(s)] represents that section 1542 has been fully explained to him/her/them/it, and he/she/it freely elects not to consult an attorney or has consulted with an attorney and in either case represents that he/she/they/it fully understands section 1542 and its implications.

FOR YOUR PROTECTION CALIFORNIA LAW REQUIRES THE FOLLOWING TO APPEAR ON THIS FORM:

§ 556. False or fraudulent claim; penalty. It is unlawful to:

Present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

Prepare, make or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim.

Every person who violates any provision of this section is punishable by imprisonment in the State prison not exceeding three years, or by fine not exceeding one thousand dollars, or by both. (Stats. 1935, c. 145, p. 511, § 556.)

By: \_\_\_\_\_  
Signature of Owner

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_  
Signature of Witness

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of Owner or Spouse, if any

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

2<sup>nd</sup> Witness<sup>1</sup>: \_\_\_\_\_  
Signature of 2<sup>nd</sup> Witness, if necessary

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Note: Please make sure to return original copies of both pages of this release otherwise we will be unable to process the settlement check.**

Copy Designation: 1<sup>st</sup> - Consumer Services; 2<sup>nd</sup> - Homeowner

**Berger & Montague, P.C.**  
ATTORNEYS AT LAW

SHANON J. CARSON

WRITER'S DIRECT DIAL 215/875-4656

WRITER'S DIRECT FAX 215/875-4604

WRITER'S DIRECT E-MAIL scarson@bm.net

January 21, 2011

**VIA ELECTRONIC MAIL**

Mark Nunnelley  
PO Box 1336  
Murphys, CA 95247

**Re: Certainteed Corporation ("Certainteed") WeatherBoards Fiber  
Cement Exterior Siding Products - Retainer Agreement**

Dear Mr. Nunnelley:

When signed by you, this letter will constitute your retainer of Berger & Montague, P.C. (the Attorneys), to represent you and a class of similarly situated consumers with respect to the claim that CertainTeed WeatherBoards FiberCement exterior siding products are defective and that Certainteed has breached certain express and implied warranties concerning those products. By signing below, you agree that the following sets forth the terms of the Attorneys' representation of you:

- 1) You have provided the Attorneys with information pertaining to a potential claim against Certainteed as set forth above. You are now retaining the Attorneys to represent you in connection with this specific claim and any subsequent settlement discussions or litigation stemming from this specific claim, either individually or as a class and/or collective action. You agree that the Attorneys' representation of you is limited to this specific claim.
- 2) You agree and understand that as a class action representative, you will have duties to maximize recovery for all members of the class and to make decisions with the interests of the entire class in mind.
- 3) The parties to this agreement agree to cooperate mutually in the prosecution of your claim. You agree to make yourself reasonably available to the Attorneys as needed to provide information and for consultation regarding the representation, and to appear at any case-related events. The Attorneys agree to keep you updated and informed as to the status of your case.
- 4) This agreement is entered into on a fully contingent basis. That is, you are not responsible for the payment of any costs or attorneys' fees during the course of the litigation. The Attorneys will advance all costs and will not send you any bills for their fees during the course of this litigation, unless the parties agree otherwise.

**Berger & Montague, P.C.**  
ATTORNEYS AT LAW

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Mark Nunnelly  
January 21, 2011  
Page 2

5) In the event of a non-class individual recovery, either by settlement or litigation, the fees due to the Attorneys shall be one-third of the total recovery, or, under applicable law, if you prevail in your claim, the Attorneys may seek the reimbursement of their fees billed at their normal hourly rates and their expenses from the Defendant. In the event of a class recovery, either by settlement or litigation, the Attorneys shall apply to the court for a fee of one-third of the total recovery subject to the court's approval, or, under applicable law, if you prevail in your claim, the Attorneys may apply to the court for an award of fees billed at their normal hourly rates and the reimbursement of their expenses from the Defendant, again subject to the court's approval.

6) The Attorneys agree to advance all expenses reasonably necessary to prosecute your claim. If the Attorneys are not successful in having all of their expenses reimbursed by the Defendant, you are liable for any unreimbursed expenses to the extent that you receive any financial recovery. If you are not successful in your claim, you will not owe the Attorneys any money either for fees or expenses.

7) The Attorneys, in their sole discretion, may elect to retain additional co-counsel to assist in this matter. All such co-counsel will be bound by the terms of this Agreement, and shall be incorporated in the definition of the term Attorneys' as used in this Agreement.

8) Either party may withdraw from this Agreement, for any reason, on ten (10) days' written notice.

9) If you discharge the Attorneys, you are obligated to reimburse the Attorneys for all of their out-of-pocket expenses, and, in addition, to pay the Attorneys a fee equivalent to the value of their time expended on this case, using the Attorneys' usual and typical hourly rates, from any recovery that you eventually obtain.

10) You hereby acknowledge that you are aware that the Attorneys may represent other consumers who are asserting a claim against CertainTeed similar to your claim. The Attorneys acknowledge their obligation to represent each of their clients in this matter, including you, to the best of their ability. By retaining the Attorneys under these circumstances, you hereby agree to waive any claims of conflict of interest that may arise from the Attorneys' multiple representation of consumers injured by CertainTeed's WeatherBoards FiberCement exterior siding products.

**Berger & Montague, P.C.**

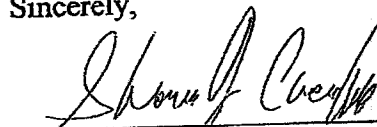
ATTORNEYS AT LAW

<sup>e</sup>  
Mark Nunnelly  
January 21, 2011  
Page 3

11) Any and all disputes between you and the Attorneys arising from this Agreement shall be submitted to binding arbitration under the rules of the American Arbitration Association with such arbitration to take place in Philadelphia. All claims arising under this Agreement will be governed by the law of the Commonwealth of Pennsylvania.

12) This is the complete agreement between you and the Attorneys. Any changes to this Agreement must be in writing and must be signed by you and the Attorneys.

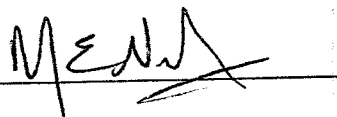
Sincerely,



Shanon J. Carson  
On behalf of the Attorneys

Agreed to:

Sign Name:



Print Name:

MARK NUNNELLEY

Date:

25 JAN 2011